

REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION (on behalf of the)
NEW YORK METROPOLITAN TRANSPORTATION COUNCIL
RFP #PSA5: 'CONSULTANT PLANNING SERVICE AGREEMENT for NYMTC'
RFP Release Date: December 6, 2021

Question and Answer Pairs (Round 1)

Pre-proposal Webinar and RFP #PSA5 Information Location:

Question 1 After our quick review of the documents, we were not able to locate the Pre-Proposal Webinar-related information scheduled for 2pm on 12/15.

Answer 1 **All information related to the RFP #PSA5 may be found on the NYMTC and NYSDOT Project websites:**

NYMTC: <https://www.nymtc.org/UTILITY-MENU/Doing-Business/Current-RFPs>

NYSDOT: <https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-ads>

The link to the pre-proposal webinar has been provided via the RFP #PSA5 RFP's Announcement #2.

Question 2 In addition, what about the pre-conference information for Consulting Planning Agreement posted on December 6, 2021?

Answer 2 **Please see answer to Question #1.**

Question 3 Good morning – My company would like to attend this webinar for RFP #PSA5 'CONSULTANT PLANNING SERVICE AGREEMENT for NYMTC': Pre-Proposal Webinar: Wednesday, December 15, 2021 at 2 PM Eastern Standard Time (EST)

Answer 3 **Please see answer to Question #1.**

Question 4 I would like to attend the webinar for preproposal information on the NYMTC PSA#5 scheduled for today. Can you please send me the details of the webinar?

Answer 4 **Please see answer to Question #1.**

Question 5 I missed the pre-proposal webinar. Is it possible to get a link to the recording?

Answer 5 **Please see answer to Question #1.**

Main Body of the RFP:

Section 1 'Introduction'

Question 6 What are the conditions to get an approved telework plan? Would you consider a hybrid model, with someone working remotely, but visiting NYMTC Central offices a predefined number of times, or as needed?

Answer 6 **The conditions to get an approved telework plan for an on-site contractor will be established between the selected contractor and the NYMTC project manager. NYMTC will consider a hybrid model, with someone working remotely, but visiting NYMTC central offices a predefined number of times or as needed in accordance with the needs of specific Task Assignment requests under a PSA5 agreement.**

Section 2 'Civil Rights Requirements'

Question 7 Is there an established DBE participation percentage/goal?

Answer 7 **While there are no civil rights goals associated with this procurement, NYSDOT and NYMTC encourage the participation of qualified DBE prime consultants for this contract opportunity.**

Section 3 'Project Objectives'

Question 8 Will adding subconsultants after a contract has been awarded be allowed.

Answer 8 **Yes, provided that subconsultants added after contract award shall have comparable or higher technical quality at the same or lower cost and shall be subject to NYMTC/NYS DOT approval. The RFP has been modified with regard to this question.**

Question 9 Could teaming partners be added after an award has been made ? (this question was asked during the pre-proposal meeting)

Answer 9 **Please see answer to Question #8.**

Section 5 'Proposal Content and Format'

Question 10 Regarding proposal delivery. Are we to upload to mySend and email all proposal sections (PDF & Word) per lot (potentially 36 files) or is it acceptable to upload individual section per lot via mySend (potentially 36 files) and email only composites of each lot (potentially 6 files)?

Answer 10 **Proposers shall send one email to (Patricia.Kappeller@dot.ny.gov) and Seitu Allen (seitu.allen@dot.ny.gov) expressing their intent to submit their Proposal electronically at that time. NYSDOT Contract Management will then send the Proposer an invitation to mySend so the Proposer can upload their RFP submission files to the mySend site. Proposers shall not email proposals to the Designated Contacts,**

directly. The RFP has been modified regarding this question.

Question 11 Per Section 5.1, are proposers required to submit both Word and PDF files for the Technical and Management Proposal and Administrative Proposal, and Excel and PDF files for the Cost Proposal, or will one file type each suffice?

Answer 11 **Per Section 5.1, proposers are required to submit both Word and PDF files for the Technical and Management Proposal and Administrative Proposal, and Excel and PDF files for the Cost Proposal.**

Question 12 Can you confirm that both PDF and Word versions are required for all submissions?

Answer 12 **Please see answer for Question #11.**

Question 13 In Section 5.2 (Part I: Technical and Management Proposal), please clarify if consultant team qualifications are to be provided only on completed Attachment 10: Firm Experience forms.

Answer 13 **The proposing consultant firms' qualifications are to be provided using the Attachment 10: Firm Experience forms. The qualifications of individuals proposed for the consultant team are to be provided using Attachment 12: Key Personnel Experience.**

Question 14 In Section 5.2 (Part I: Technical and Management Proposal), please confirm that Attachment 12 is only to be completed for each Lot's Consultant Project Manager, and that for all other staff (Key Personnel), a standard resume is to be provided?

Answer 14 **Attachment 12 is to be completed for each lot's Consultant Project Manager and all other key personnel. A resume shall be provided for each Lot's Consultant Project Manager and a resume shall be provided for each Key Personnel. The RFP's Attachment 12 has been modified regarding this question.**

Question 15 In the Part II: Cost Proposal response, will NYMTC accept loaded home and field rates, without overhead and fee broken down?

Answer 15 **The RFP's Attachment 13: Cost Proposal has been modified such that proposers shall only offer fully loaded not-to-exceed home office and field office billing rates, without breaking out the direct labor cost, overhead rates, and fee that comprise the fully loaded billing rates.**

Question 16 Do rates need to be based on raw direct pay rate times overhead?

Answer 16 **Please see answer to Question 15.**

- Question 17 Can profit be applied to rate inclusive of overhead?
Answer 17 **Please see answer to Question 15.**
- Question 18 Can a particular partner be presented as a vendor, in which case would they still be required to provide a breakdown of the cost components – salary, overhead and fee?
Answer 18 **Please see answer to Question 15.**
- Question 19 If a subconsultant were to disclose cost information that they consider proprietary, could we request that their cost information be treated as proprietary and protected from public disclosure?
Answer 19 **Per the RFP’s section 5.3 ‘Part II: Cost Proposal’, confidential and proprietary information should be identified and addressed in the cover letter and title page. NYSDOT will determine if such is proprietary and protected from public disclosure.**
- Question 20 Are cost proposals submitted by proponents required to comply with federal acquisition regulation (FAR) part 31 (federal cost principles for-profit entities)?
Answer 20 **Yes.**
- Question 21 In Section 5.4 (Part III: Administrative Proposal), please confirm that the only forms/certifications that subconsultants need to provide are a) a Vendor Responsibility Questionnaire online certification and b) Attachment 5A: Subconsultant Information.
Answer 21 **Yes.**

Section 7 ‘Administrative Specifications’:

- Question 22 Do you expect this contract to be lump sum, or time and materials?
Answer 22 **The payment method for contracts resulting from this procurement will be lump sum.**

Section 8 Attachments:

Draft Contract

- Question 23 Will the State consider substituting the following language in lieu of the current Consultant Liability language in Article 11, so that the indemnification obligation is predicated on a negligence standard?
- Consultant’s Liability.* Consultant shall be responsible for all damage to life and property due to intentional acts, negligent acts, errors or omissions of the Consultant, its sub-contractors, or employees in the performance of its service under this Agreement. Further, it is expressly understood that the Consultant shall indemnify and save harmless the STATE from claims, suits, actions, damages, and costs of every name and description to the

extent resulting from the negligent performance of the services or activities performed by Consultant under this Agreement, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided.

Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon Consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

Consultant's responsibility and indemnity shall also include but not be limited to liability resulting from any infringement violation by Consultant of proprietary rights, copyrights, trademarks, or right of privacy arising out of the intellectual property furnished by Consultant under this Agreement, except when attributable to the fault or negligence of the STATE, its officers, employees or agents.

Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against Consultant or the STATE beyond such as may legally exist irrespective of this Article or this Agreement.

In case an action shall at any time be brought against the State, asserting a allegation or cause of action for which Consultant is putatively liable, the Consultant shall, at its own cost and expense, and without any cost or expense whatever to the STATE, defend such suit and indemnify and save harmless such parties against all costs and expenses thereof, including reasonable attorney fees and expenses, and promptly pay or cause to be paid any final judgment recovered against the STATE; provided, however, that the STATE gives notice to Consultant and thereafter provide all such information as may from time to time be requested by Consultant or its representatives. The STATE shall furnish to Consultant all such information relating to claims made for injuries, deaths, losses, damages, or destruction of the type covered by this Article as Consultant may from time to time request. The provisions of this Article shall not impinge on the right of any of the State to pursue its own defense in any filed or threatened actions.

Answer 23

The RFP's draft contract remains unmodified regarding this question.

Question 24

Will the State consider modifying Article 11 to read:
"CONSULTANT LIABILITY. The CONSULTANT shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the CONSULTANT, his subcontractors, agents or employees, in the performance of his service under this Agreement. Further, it is expressly understood that the CONSULTANT shall indemnify and save harmless the STATE from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the CONSULTANT under this Agreement, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the CONSULTANT's failure to meet professional standards and resulting in obvious or patent errors in the progression of his work. Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the CONSULTANT or the STATE beyond such as may legally exist irrespective of this Article or this Agreement"? The State has agreed to this in other contracts as it more accurately aligns with what professional services consultants can obtain in the way of insurance.

Answer 24

The RFP's draft contract remains unmodified regarding this question.

Question 25

Will the State consider modifying Article 12, Section 1.A to read:

Coverage Types and Policy Limits. The types of coverage and policy limits required from the Consultant are specified in Section 2, Insurance Requirements, below. ~~Insurance shall apply separately on a per job or per project basis.~~

Answer 25

The RFP's draft contract remains unmodified regarding this question.

Question 26

Will the State consider deleting the following sentence from Article 12, Section C:

In addition, if required by the Department, the Consultant shall deliver to the Department, within ten (10) business days of such request, a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete.

Answer 26

The RFP's draft contract remains unmodified regarding this question.

Question 27

Will the State consider modifying Article 12, Section E to read:

The commercial general liability and ~~protective~~ commercial automobile liability insurance policies shall provide primary and non-contributory coverage to the DEPARTMENT for any claim arising from the CONSULTANT'S work under this CONTRACT, or as a result of the CONSULTANT'S activities.

Answer 27

The RFP's draft contract remains unmodified regarding this question.

Question 28

Will the State consider modifying Article 12, Section F to read:

As to every type and form of insurance coverage required from the Consultant except professional liability insurance, there shall be no right of subrogation against the State of New York/New York State Department of Transportation, its agents or employees. To the extent that any of Consultant's policies of insurance prohibit such a waiver of subrogation, Consultant shall secure the necessary permission to make this waiver.

Answer 28

The RFP's draft contract remains unmodified regarding this question.

Question 29

Will the State consider modifying Article 12, Section G to read:

~~At least ten (10) calendar days p~~Prior to the expiration of any policy required by this CONTRACT, evidence of renewal or replacement policies of such insurance with terms no less favorable to the DEPARTMENT than the expiring policies shall delivered to the DEPARTMENT ~~in the manner required for service of notice in Section C—Certificates of Insurance/Notices above.~~

Answer 29

The RFP's draft contract remains unmodified regarding this question.

Question 30

Will the State consider modifying Article 12, Section H to read:

Self insured retentions and deductibles shall be approved by NYSDOT which approval shall not be unreasonably withheld. ~~Consultants utilizing self-insurance programs are required to provide a description of the program for Department approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the Contract Documents of a particular project, Consultant administered insurance deductible shall be limited to the amount of the bid deposit or \$100,000, whichever is less. Security is not required if it is otherwise provided to an administrator for an approved risk management program. The Department will not accept a self-insured retention program without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The Consultant shall be solely responsible for all claim expense and loss payments within any permitted deductible or self-insured retention. If the Consultant's deductible in a self-administered program exceeds the amount of the bid deposit, the Consultant shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by Department must be issued by a guarantor or surety with an AM Best Company rating of "A minus" or higher. If, at any time during the term of this agreement, the Department, in its sole discretion, determines that the Consultant is not paying its deductible, it may require the Consultant to collateralize all or any part of the deductible or self-insured retention on any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the Consultant.~~

Answer 30

The RFP's draft contract remains unmodified regarding this question.

Question 31

Will the State consider modifying Article 12, Section J to allow prime consultants to have flexibility in determining which types and amounts of insurance to require of subconsultants?

Answer 31

The RFP's draft contract remains unmodified regarding this question.

- Question 32 Will the State consider adding the following paragraph to Article 28 to allow for a cure period?
Opportunity to Cure. In the event of Suspension of Work for Non-Responsibility or Termination for Non-Responsibility, NYSDOT shall provide not less than fourteen days written notice to Consultant during which time Consultant may cure the circumstances giving rise to the determination by NYSDOT of non-responsibility.
- Answer 32 **The RFP's draft contract remains unmodified regarding this question.**
- Question 33 Will the State consider modifying the first sentence of Article 34 in order to clarify that it is relevant only to staff working on this project, so that it reads:
The CONSULTANT and its subconsultants/subcontractors shall not ~~engage~~ assign to perform services under this CONTRACT any person who is, or has been at any time, in the employ of the STATE to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of STATE employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively the "Ethics Requirements").
- Answer 33 **The RFP's draft contract remains unmodified regarding this question.**
- Question 34 Will the State consider modifying the Order of Precedence in Article 3 such that the Consultant's Proposal controls over the terms of the RFP.
- Answer 34 **The RFP's draft contract remains unmodified regarding this question.**
- Question 35 Will the State confirm that Article 35, IT Project Requirements, is not likely to be applicable to services performed under this agreement?
- Answer 35 **Article 35 presents IT project work requirements for any IT project work directed by NYMTC for the selected consultant (or team of consultants) to perform and deliver while under a resulting PSA5 agreement.**
- Question 36 Does any work performed for Lot 2 and Lot 3 qualify as new IT project development or new IT application developed, especially in terms of enhancement and/or support services under subsection 1 of Article 35?
- Answer 36 **Please see answer to Question 35.**

Question 37 Will the State consider deleting Appendix D, or otherwise confirm that the Information Technology Infrastructure Requirements are not likely to be applicable to the services performed under this agreement?

Answer 37 **Please see answer to Question 35.**

Attachment 12:

Question 38 Regarding Attachment 12. Is it necessary to complete this attachment for ALL key personnel or only the proposed project manager per lot?

Answer 38 **Please see answer to Question 14.**

Question 39 For Attachment 12, can we use NYMTC staff as references?

Answer 39 **Yes.**

Attachment 14:

Question 40 Please confirm that for lots 1 and 3 that you would like a Level I for the role as described on RFP pages 109 and 114 respectively, at 1,600 hours each.

Answer 40 **The annual level of effort indicated in the Attachment 13: Cost Proposal, for each Job Category and Level, is for cost evaluation purposes only. The actual annual level of effort for Task Assignments under a PSA agreement for the Lot, by Job Category and Level, will be determined through negotiated Task Assignment Requests.**

Question 41 For Lot 2 - Data Collection, Monitoring and Analysis, will the required tasks include collecting traffic volume counts or turning movement data in the field?

Answer 41 **No.**

Question 42 For Lot 2, what types of data has NYMTC captured historically?

Answer 42 **NYMTC collects, stores, and analyzes a wide variety of data to support NYMTC's planning processes, including information on travel behavior characteristics, travel demand modeling, travel monitoring, etc. The [Data and Modeling](#) section on the NYMTC website (which may be accessed by clicking on the provided hyperlink) provides a detailed list of processes and associated data types.**

- Question 43 For Lot 2, will the contractor be expected to execute all data collection for NYMTC during the contract period, or will internal NYMTC resources and/or other third-party entities also be capturing or providing data in parallel? If a joint effort, what data should the contractor expect to be focused on?
- Answer 43 **As described in the RFP's description for Lot 2, NYMTC staff collects, stores and analyzes data for regional planning products and reports. In general, NYMTC staff will provide the applicable data to the on-call consultant team for analysis. NYMTC staff generally captures data from various transportation agencies, public websites, and third-party entities. NYMTC staff will make the data available to the consultant if purchased from a third-party.**
- Question 44 Please clarify, does NYMTC require on-call or on-site support services for Lot 2: Data Collection, Monitoring and Analysis process.
- Answer 44 **Lot 2: Data Collection, Monitoring and Analysis requires on-call support services. The RFP has been modified with regard to this question.**
- Question 45 For Lot 3, what versions of ArcGIS, TransCAD and Tableau are in use now?
- Answer 45 **ArcGIS – 10.7.1
TransCAD – 8.0
Tableau – The contractor will have access to the latest on-line version of Tableau Creator.**
- Other Questions:**
- Question 46 Can NYMTC confirm that working on these agreements will not preclude my firm from future work on NYSDOT projects?
- Answer 46 **NYMTC and NYSDOT confirm that a consultant's work on a PSA5 agreement will not preclude future work on NYSDOT projects.**
- Question 47 Will there be interviews for the top candidates, and when will those interviews take place?
- Answer 47 **There will be no interviews conducted for this procurement.**
- Question 48 For embedded staff candidates, can we identify a staff person who has accepted job offer but has yet to start work?
- Answer 48 **Yes.**